

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20544**

In the Matter of)	
)	
SmartEdgeNet, LLC)	CC Docket No. 99-200
)	
Petition for Limited Waiver)	
of Section 52.15(g)(2)(i) of the)	
Commission's Rules Regarding Access)	
to Numbering Resources)	

PETITION FOR LIMITED WAIVER

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TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION.....	1
II. BACKGROUND	2
III. DISCUSSION	4
A. Good Cause Exists to Grant the Petition.....	4
B. SEN Will Comply with the Same Conditions Imposed on SBCIS.....	5
C. The Request is Limited	6
D. The Commission Should Grant the Instant Petition on an Expedited Basis	7
IV. CONCLUSION	8

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PETITION FOR LIMITED WAIVER

I. INTRODUCTION

SmartEdgeNet, LLC ("SEN"), respectfully requests that the Commission grant it a limited waiver of Section 52.15(g)(2)(i) of the Commission's rules to allow SEN to obtain numbering resources directly from the North American Numbering Plan Administrator ("NANPA") and/or the Pooling Administrator ("PA") comparable to the limited waiver granted to SBC Internet Services, Inc. ("SBCIS").¹

In a fashion similar to SBCIS, SEN intends to use numbering resources to deploy new and innovative Internet Protocol ("IP") enabled services — including Voice over Internet Protocol ("VoIP") — on a commercial basis to small and medium sized business customers throughout the United States. Good cause exists to grant this request. SEN's services, referred to as Platform as a Service, or PaaS, promise dynamic, universal access to all devices used by small and medium sized businesses, including mobile devices and mobile applications, while preserving an Open Network Architecture. By providing integrated communications, SEN's

¹ *In the Matter of Administration of the North American Numbering Plan*, Order, CC Docket 99-200, FCC 05-20, 20 FCC Rcd 2957 (2005) ("*SBCIS Waiver Order*").

services permit these businesses to reduce their operational expenses and, at the same time, realize the full potential of their devices. A key functionality of the SEN solution is VoIP access to the Public Switched Network (“PSTN”). SEN desires to interconnect to the PSTN in a manner similar (if not identical) to the interconnections used by state-certificated carriers even though SEN is not a carrier.²

SEN requests that the Commission grant a limited waiver of Section 52.15(g)(2)(i) comparable to the SBCIS waiver granted by the Commission until the Commission adopts final numbering rules either through the North American Numbering Council or in the *IP-Enabled Services* proceeding.³ Indeed, as noted by the Commission in the *SBCIS Waiver Order*, “[t]o the extent other entities seek similar relief we would grant such relief to an extent comparable to what we set forth in this Order.”⁴ SEN is hereby seeking similar relief. SEN also requests that the Commission grant this Petition on an expedited basis to avoid any delay of the public interest benefits found by the Commission in the *SBCIS Waiver Order* that are equally applicable to this matter.⁵

II. BACKGROUND

SEN is a new company that will place a low cost, remotely managed, IP-enabled local access node on the premises of small to medium sized businesses, which will allow them to realize a 30% to 50% reduction in their capital and operating expenses while receiving services, features and functions equal to those of large enterprise networks. The node is configured and

² SEN is not a carrier because it does not provide telecommunications services. It is an enhanced service provider.

³ *IP-Enabled Services*, Notice of Proposed Rulemaking, WC Docket No. 04-36, FCC 04-28, 19 FCC Rcd 4863 (2004) (“*IP-Enabled Services NPRM*”).

⁴ *SBCIS Waiver Order*, 20 FCC Rcd 2957, ¶ 4. As set forth below, SEN is willing to comply with all of the conditions established by the Commission in the *SBCIS Waiver Order*. *Id.* ¶¶ 4, 9.

⁵ *Id.* ¶¶ 4, 6, 8, 9.

connected to broadband facilities and any wired or wireless devices on the customer's premise. Thus, SEN is able to provide a 24/7 managed, single bill, all-in-one solution that fulfills the voice, data, application and connectivity requirements of its small and medium sized business customers. Consistent with the Commission's long-standing public interest standard, SEN's customers will be the primary beneficiaries of the waiver.

Section 52.15(g)(2)(i) of the Commission's rules requires that an applicant requesting numbering resources must be "authorized to provide service in the area for which the numbering resources are being requested." To be "authorized," the Commission has concluded, means that carriers must "provide, as part of their applications for initial numbering resources, evidence (e.g., state commission order or state certificate to operate as a carrier) demonstrating that they are licensed and/or certified to provide service in the area in which they seek numbering resource[s]."⁶ In other words, an applicant must be a state licensed or certificated carrier to gain direct access to telephone numbers.

Since SEN, as an enhanced service provider, does not provide services that are state licensed or certificated, it does not have access to number resources. Instead, it must purchase retail services from LECs or CLECs, such as Primary Rate Interface or Direct Inward Dialing services, in order to provide its customers with telephone numbers. SEN would prefer a wholesale means by which to interconnect with the PSTN and would like the numbers provided to its customers to be the numbers assigned to SEN and not the numbers provided to a third party LEC or CLEC.

SEN, therefore, seeks Commission approval to gain access to numbering resources without the necessity of a state license or certification so that, in a cost effective manner, SEN's

⁶ *Numbering Resource Optimization*, Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 99-200, FCC 00-104, 15 FCC Rcd 7574, ¶ 97 (2000).

customers can make and receive IP-based telephone calls to and from the PSTN using SEN's innovative and advanced services. Absent the approval requested by this Petition, SEN must (1) remain the captive of inefficient, retail rates and will be unable to pass the benefits of its new and advanced IP-enabled services on to the consumer, (2) become a regulated carrier even though it provides unregulated services, or (3) remove VoIP from its lexicon of services and effectively be shut out of the competitive marketplace.

III. DISCUSSION

A. Good Cause Exists to Grant the Petition

Pursuant to Section 1.3 of the Commission's rules, the Commission may waive a rule upon a showing of "good cause."⁷ As stated by the Commission in the *SBCIS Waiver Order*:

The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. In doing so, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.⁸

As also stated by the Commission in the *SBCIS Waiver Order*, waiver of the Commission's rules is appropriate when "special circumstances" warrant a deviation from the general rule and the deviation serves the public interest.⁹

Special circumstances in this instance are comparable, if not identical, to the special circumstances before the Commission in the *SBCIS Waiver Order*. In that case, the Commission determined that special circumstances existed because absent a waiver, "SBCIS would have to partner with a local exchange carrier . . . to obtain . . . telephone numbers."¹⁰ The same special circumstances apply to SEN, *viz.*, absent a waiver of Section 52.15(g)(2)(i), SEN would have to

⁷ 47 C.F.R. § 1.3.

⁸ *SBCIS Waiver Order*, 20 FCC Rcd 2957, ¶ 3 (footnotes omitted).

⁹ *Id.*

¹⁰ *Id.* ¶ 4.

partner with a local exchange carrier to obtain telephone numbers. Accordingly, the special circumstances in this instance warrant a deviation from the general rule that limits the assignment of numbering resources to state licensed or certificated carriers.

Allowing SEN to obtain numbers from NANPA and the PA is in the public interest because, as stated by the Commission in the *SBCIS Waiver Order*, it will help to “expedite the implementation of IP-enabled services that interconnect to the PSTN”¹¹; it will enable SEN “to deploy innovative new services and encourage the rapid deployment of new technologies and advanced services that benefit American consumers”¹²; and it will facilitate SEN’s ability “to efficiently interconnect to the PSTN, and thereby help to achieve the Commission’s goals of fostering innovation and speeding the delivery of advanced services to consumers.”¹³

In short, the instant Petition is based on the identical special circumstances found by the Commission to justify granting the SBCIS request in the *SBCIS Waiver Order* and would further the same public interest goals. Therefore, SEN believes it (and any other identically situated VoIP provider) readily qualifies for a waiver of Section 52.15(g)(2)(i).

B. SEN Will Comply with the Same Conditions Imposed on SBCIS

SEN will comply with all of the conditions the Commission established when it granted SBCIS’ request for numbering resources. Specifically, SEN will comply with “the Commission’s other numbering utilization and optimization requirements, numbering authority delegated to the states, and industry guidelines and practices, including filing the Numbering Resource Utilization and Forecast Report (NRUF).”¹⁴ SEN will not seek “Code Holder” status

¹¹ *SBCIS Waiver Order*, 20 FCC Rcd 2957, ¶ 4.

¹² *Id.*

¹³ *Id.* ¶ 6.

¹⁴ *Id.* ¶ 4 (footnote omitted). *See also id.* ¶ 9.

from NANPA or the PA. SEN will “submit any requests for numbering resources to the Commission and the relevant state commission at least 30 days prior to requesting resources from the NANPA or the PA.”¹⁵ SEN will meet the “facilities readiness” requirement set forth in Section 52.15(g)(2)(ii) of the Commission’s rules, including “evidence that it has ordered an interconnection service pursuant to a tariff that is generally available to other providers of IP-enabled services.”¹⁶ In addition, recognizing that it will not be a “telecommunications carrier” for the purposes of 47 U.S.C. §§ 251 and 252, SEN will work with one or more telecommunications carriers, via direct interconnections or market-based solutions, such as competitive tandem services, to assure that its nodes will be correctly homed for the Local Exchange Routing Guide (*i.e.*, that the number is assigned to the same rate center in which the node is located) and it will not seek numbering resources from its carrier partners. SEN does not intend to participate in any intercarrier compensation arrangement, as such responsibility will rest with the telecommunications carrier with which SEN will associate itself.

C. The Request is Limited

SEN only requests the waiver until the Commission adopts final numbering rules for IP-enabled services. SEN recognizes that the Commission has not yet decided whether any action relating to numbering resources is needed.¹⁷ Granting the waiver will not prejudice the outcome of the *IP-Enabled Services* proceeding because the Commission has complete discretion to take whatever action it finds necessary in that matter. As noted by the Commission

¹⁵ *Id.* ¶ 9 (footnote omitted).

¹⁶ *Id.* ¶ 10.

¹⁷ *IP-Enabled Services NPRM*, 19 FCC Rcd 4863, ¶ 76 (seeking comments on the desirability of numbering resources for IP-enabled services).

in the *SBCIS Waiver Order*, the Commission has “previously granted waivers . . . pending the outcome of rulemaking proceedings.”¹⁸

D. The Commission Should Grant the Instant Petition on an Expedited Basis

In granting SBCIS’ comparable request, the Commission recognized that IP-enabled services, such as SEN’s, “promise to be revolutionary,” that they have “increased economic productivity and growth” and they encourage consumer demand for more broadband connections which “will foster the development of more IP-enabled services.”¹⁹ The Commission found that allowing SBCIS to have direct access to numbers as requested by the instant Petition, “will help expedite the implementation of IP-enabled services that interconnect to the PSTN” and will “encourage the rapid deployment of new technologies and advanced services that benefit American consumers.”²⁰

The same considerations apply in this instance. SEN requests that the Commission act on this Petition as soon as possible so that the implementation and deployment of SEN’s IP-enabled services that interconnect to the PSTN can occur expeditiously in order for small to medium sized business users to sooner, rather than later, take full advantage of the cost savings and functionalities of SEN’s advanced, IP-enabled services.

¹⁸ *SBCIS Waiver Order* ¶ 11 (footnote omitted).

¹⁹ *Id.* ¶ 8 (footnote omitted).

²⁰ *Id.* ¶ 4.

IV. CONCLUSION

For the foregoing reasons, SEN respectfully requests the Commission to grant the instant Petition, in particular, to grant a waiver of Section 52.15(g)(2)(i) of the Commission's rules — comparable to that granted to SBCIS — to allow SEN to obtain numbering resources directly from NANPA and/or the PA for use in the provision of SEN's IP-enabled services.

Respectfully submitted,



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